

ARP 5583.1
PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of Bellick, et al.
Serial No. 10/821,334
Filed April 9, 2004
Confirmation No. 9991
For SLEEPING BAG WITH VENTED FOOTBOX
Examiner Gay Spahn

Art Unit 3673

June 27, 2005

PRE-APPEAL BRIEF REQUEST FOR REVIEW

TO THE ASSISTANT COMMISSIONER FOR PATENTS,
SIR:

Applicants hereby request review of the Office's rejection of claims 1-18 as set forth in the final Office action dated March 25, 2005 and Advisory Action dated June 7, 2005.

While no fees are believed due with respect to this Request, the Commissioner is authorized to charge any fees due to Deposit Account No. 19-1345.
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ARGUMENTS

Claim 1 stands rejected under 35 U.S.C. §103(a) as being obvious in view of U.S. Patent Nos. 5,881,405 (Garrigues) and 6,175,976 (Cantwell). Claim 1 is directed to a vented sleeping bag comprising, *inter alia*, a) at least one vent in said overlying portion of the shell located adjacent the foot end of the shell between the left and right sides of the shell, and b) a closure selectively movable between a closed position for closing said at least one vent and an open position for creating a vent opening for ventilating the inner volume of the shell. However, both of the references cited by the Office fail to show or suggest a vented sleeping bag having at least one vent in the overlying portion of the shell located adjacent the foot end of the shell between the left and right sides of the shell. Thus, applicants submit that the Office's rejection omitted at least one essential element needed for a *prima facie* rejection.

In the Advisory Action, the Office asserts that Garrigues discloses a vent comprising the "combination of the foot vent (40) and the vent duct (30) and since the vent duct (30) is on the overlying portion, the claim language is met." Applicants respectfully disagree. Claim 1 specifies that the vent is in the overlying portion of the shell. The Garrigues duct is not a vent.

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A vent is "an opening or hole for the escape or passage of something (as of a gas or liquid) or for the relief of pressure within something (as a boiler)". Webster's Third New International Dictionary Unabridged 2541 (2002). Paragraphs 20 and 21 of the pending specification clearly indicate that the vent, as recited in claim 1, is capable of forming an opening. Particularly, paragraph 20 states that "when the vent is open (Fig. 4), a vent opening 29 is created which allows warm stagnant air within the bag 1 to escape and fresh, ambient air to enter the bag. Paragraph 21 further adds that "when the closure is moved to an open position (Fig. 4), the edges 35 of the shell 5 can be separated to create a vent opening 29 of selected size." As clearly illustrated in Fig. 4, the vent opening 29 is located on the overlying portion 19 of the shell 5.

The vent duct disclosed in Garrigues is clearly not a vent as recited in claim 1. As shown in the marked-up copy of Fig. 4 of Garrigues attached as Exhibit A, the vent (i.e., opening) of Garrigues is the opening indicated by the "V", which is formed between the foot vent cover 44 and the end piece 16 of the sack 10. This opening or hole is what allows for the escape or passage of air from the interior space of the bivy sack. Thus, the vent of Garrigues is clearly not positioned on the overlying portion of the shell.

Cantwell, the other reference cited by the Office, also fails to disclose or suggest at least one vent in the overlying portion of the shell.

Both Garrigues and Cantwell fail individually to teach or suggest a vent in the overlying portion of the shell located adjacent the foot end of the shell between the left and right sides of the shell. Thus, the combination of Garrigues and Cantwell also fails to teach or suggest this element of claim 1. Since obviousness can only be established if every claim element is taught or suggested by the prior art (see MPEP §2143.03 citing *In re Royka*, 180 U.S.P.Q. 580, 583 (C.C.P.A. 1974)), claim 1 is nonobvious and patentable over Garrigues in view of Cantwell.

Claim 1 stands further rejected under 35 U.S.C. §103(a) as being obvious over U.S. Patent No. 2,234,546 (Basch) in view of Cantwell. However, as recognized by the Office, these references fail to show or suggest a vented sleeping bag having a closure selectively moveable between a closed position for closing at least one vent and an open position for creating a vent opening.

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As shown in Fig. 1, Basch discloses a coverall garment (1) for babies having a body portion (13), a hood (5), sleeves (2), and a bottom (3). The body portion (13) has a longitudinally extending slide fastener (4) that can be moved between a closed position, and an open position for allowing access to the interior of the skirt portion (15), e.g., for changing the baby's diaper, placing a baby within the garment (1), or removing the baby from the garment. As illustrated in Fig. 6, the slide fastener (4) can be mounted such that the slide closes the slide fastener by moving it from a location near the neck (7) of the garment (1) towards the bottom (3) of the garment. Thus, the slide fastener allows access to the skirt portion (15) in order to change the baby's diaper without having to open the upper portion of the garment.

Basch does not disclose or suggest that the opening for accessing the skirt portion (15) of the garment can be used as a vent. Basch is a coverall garment for babies, not a sleeping bag. Such a garment does not suggest the need for a vent. In fact, Basch teaches away from a vent in the skirt portion. Basch states that "One of the primary objects of the invention is to simultaneously provide a completely closed bag for the feet and legs to prevent the baby or other person using same from becoming cold or kicking off the covers..." Column 1, lines 41-45. Accordingly, Basch fails altogether to disclose or suggest a vent and a vent closure as required by claim 1.

The Office asserts in the Advisory Action that "*the fact that Basch does not disclose or suggest that the opening in the skirt portion 15 can be used as a vent does not mean that one of ordinary skill in the art would not recognize the the [sic] opening could well act as a vent.*" *Emphasis added.* Thus, the Office concedes that Basch "does not disclose or suggest...a vent." Basch's coverall garment therefore lacks not only a vent but must also lack a closure selectively movable between a closed position for closing the vent and an open position for creating a vent opening, as recited in claim 1.

Cantwell (like Basch) also fails to disclose or suggest a vent and a closure for a vent selectively movable between a closed and open position, as recited in claim 1. Cantwell discloses a sleeping bag (10) having a slide fastener (30) for providing partial separation of the top section (24) from the bottom section (22) to allow easy entry and egress by the person using the bag.

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Basch and Cantwell, whether considered alone or in combination, fail to teach or suggest a closure selectively moveable between a closed position for closing at least one vent and an open position for creating a vent opening. As stated above, obviousness can only be established if every claim requirement is taught or suggested by the prior art. Accordingly, claim 1 is nonobvious and patentable over Basch in view of Cantwell.

Additionally, neither Basch nor Cantwell suggests the desirability of making the necessary modifications to the prior art devices to obtain the applicants' invention. The Federal Circuit has repeatedly warned that to imbue a skilled artisan with knowledge of an invention, when no reference of record conveys or suggests that knowledge, is to fall victim to the "insidious effect of a hindsight syndrome wherein that which only the inventor taught is used against its teacher." *W.L. Gore & Assoc. v. Garlock, Inc.*, 220 U.S.P.Q. 303, 312-13 (Fed. Cir. 1983).

The fasteners of Cantwell and Basch are both used for allowing access to and from the interior of the bag and garment, respectively. Thus, why would one of ordinary skill in the art be motivated to add the fastener of Cantwell to the garment of Basch since Basch already discloses a fastener for allowing access to the interior of the garment? Applicants agree with the Examiner that Cantwell and Basch disclose "functionally equivalent way[s] of providing means of egress and entry." See page 5, lines 13-18 of the final Office action. Thus, at most, one of ordinary skill in the art would be motivated to use either the fastener of Cantwell or the fastener of Basch to provide entry into and exit out of bag or garment. But one of ordinary skill in the art would clearly not be motivated to use both on the same bag or garment since doing so would be redundant. Thus, there is no motivation or suggestion to combine Cantwell with Basch. The Examiner's position set forth in the Advisory Action is "that if the zipper (4) of Basch were used as a vent, then one would need an alternate manner of entry and egress and therefore, it would be well within the skill of one of ordinary skill in the art to modify Basch to include the side zipper of Cantwell to act as a means of entry and egress when the zipper (4) of Basch is functioning as a vent" is flawed because there is no suggestion or motivation (nor does the Examiner assert that there is any suggestion or motivation) to use the zipper disclosed in Basch to form a vent to begin with.

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Moreover, Basch expressly teaches away from its combination with Cantwell. As described in lines 41-53 of column 1, Basch's coverall provides a bag for the user's feet and sleeves for the user's arms. The sleeves "allow the occupant more freedom of action than sleeveless sleeping bags, for instance, and to keep the occupant from becoming twisted around in the bag, which might otherwise be dangerous to infants". Column 1, lines 47-50. Since it is improper to combine references where the references teach away from their combination, *In re Grasselli*, 713 F.2d 731, 743, 218 USPQ 769, 779 (Fed. Cir. 1983), the combination of Basch with Cantwell, which discloses a sleeveless sleeping bag, is improper.

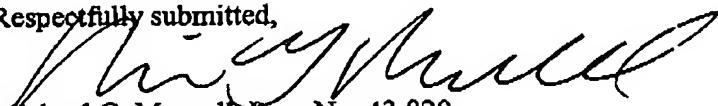
For all of the above reasons, claim 1 is submitted as patentable over the references of record, including Garrigues, Basch, and Cantwell, since these references fail individually and collectively to disclose or suggest all of the features recited in claim 1. Claims 2-10 and 18 depend directly or indirectly from claim 1 and are submitted to be patentable over the references of record for at least the same reasons as claim 1.

Claim 11 is directed to a vented sleeping bag comprising, *inter alia*, at least one longitudinal vent in said overlying portion of the shell located between the left and right sides of the shell and extending longitudinally of the shell, and a closure selectively movable between a closed position for closing said at least one longitudinal vent and an open position for creating a vent opening for ventilating the inner volume of the shell.

To the extent claim 11 includes the same recitations as claim 1, it is patentable for the same reasons. Claims 12-17 depending from claim 11 are submitted to be patentable.

In view of the foregoing, favorable consideration and allowance of claims 1-18 is respectfully requested.

Respectfully submitted,


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